

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

MARC ANTHONY EARLEY,

Plaintiff,

v.

NDOC, *et al.*,

Defendants.

Case No. 3:22-cv-00299-ART-CLB  
DISMISSAL ORDER FOR FAILURE  
TO FILE AMENDED COMPLAINT

Plaintiff Marc Earley (“Plaintiff”) brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Ely State Prison. (ECF No. 4 at 1.) On January 30, 2023, this Court entered an order stating Plaintiff must file a second amended complaint by March 1, 2023. (ECF No. 12 at 9-10.) The Court warned Plaintiff that the action could be dismissed if he failed to file a second amended complaint by that deadline. (*Id.*) That deadline expired and Plaintiff did not file a second amended complaint, move for an extension, or otherwise respond.

**I. DISCUSSION**

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to

1 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy  
2 favoring disposition of cases on their merits; and (5) the availability of less drastic  
3 alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217,  
4 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

5 The first two factors, the public's interest in expeditiously resolving this  
6 litigation and the Court's interest in managing its docket, weigh in favor of  
7 dismissing Plaintiff's claims. The third factor, risk of prejudice to defendants,  
8 also weighs in favor of dismissal because a presumption of injury arises from the  
9 occurrence of unreasonable delay in filing a pleading ordered by the court or  
10 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.  
11 1976). The fourth factor—the public policy favoring disposition of cases on their  
12 merits—is greatly outweighed by the factors favoring dismissal.

13 The fifth factor requires the Court to consider whether less drastic  
14 alternatives can be used to correct the party's failure that brought about the  
15 Court's need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983,  
16 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before*  
17 the party has disobeyed a court order does not satisfy this factor); *accord*  
18 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that  
19 “the persuasive force of” earlier Ninth Circuit cases that “implicitly accepted  
20 pursuit of less drastic alternatives prior to disobedience of the court's order as  
21 satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled  
22 with the warning of dismissal for failure to comply[,]” have been “eroded” by  
23 *Yourish*). Courts “need not exhaust every sanction short of dismissal before  
24 finally dismissing a case, but must explore possible and meaningful  
25 alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).  
26 Because this action cannot realistically proceed until and unless Plaintiff files a  
27 second amended complaint, the only alternative is to enter a second order setting  
28 another deadline. But the reality of repeating an ignored order is that it often

1 only delays the inevitable and squanders the Court's finite resources. The  
2 circumstances here do not indicate that this case will be an exception: there is  
3 no hint that Plaintiff needs additional time or evidence that he did not receive  
4 the Court's screening order. Setting another deadline is not a meaningful  
5 alternative given these circumstances. So the fifth factor favors dismissal.

## 6 **II. CONCLUSION**

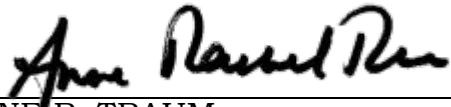
7 Having thoroughly considered these dismissal factors, the Court finds that  
8 they weigh in favor of dismissal. It is therefore ordered that this action is  
9 dismissed without prejudice based on Plaintiff's failure to file a second amended  
10 complaint in compliance with this Court's January 30, 2023, order and for  
11 failure to state a claim. The Clerk of Court is directed to enter judgment  
12 accordingly and close this case. No other documents may be filed in this now-  
13 closed case. If Plaintiff wishes to pursue his claims, he must file a complaint in  
14 a new case.

15 It is further ordered that Plaintiff's application to proceed *in forma pauperis*  
16 (ECF No. 1) without having to prepay the full filing fee is **granted**. Plaintiff will  
17 **not** be required to pay an initial installment fee. Nevertheless, the full filing fee  
18 will still be due, pursuant to 28 U.S.C. § 1915, as amended by the Prison  
19 Litigation Reform Act.

20 It is further ordered that, pursuant to 28 U.S.C. § 1915, as amended by  
21 the Prison Litigation Reform Act, the Nevada Department of Corrections will  
22 forward payments from the account of **Marc Anthony Earley, #1190247** to the  
23 Clerk of the United States District Court, District of Nevada, 20% of the preceding  
24 month's deposits (in months that the account exceeds \$10.00) until the full \$350  
25 filing fee has been paid for this action. The Clerk of the Court will send a copy of  
26 this order to the Finance Division of the Clerk's Office. The Clerk will send a copy  
27 of this order to the Chief of Inmate Services for the Nevada Department of  
28 Corrections at [formapauperis@doc.nv.gov](mailto:formapauperis@doc.nv.gov).

1           It is further ordered that, even though this action is dismissed, or is  
2 otherwise unsuccessful, the full filing fee will still be due, pursuant to 28 U.S.C.  
3 § 1915, as amended by the Prison Litigation Reform Act.

4           DATED THIS 31st day of March 2023.

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8 ANNE R. TRAUM  
9 UNITED STATES DISTRICT JUDGE  
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